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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of **FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**	**CC Docket No. 96-45**

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS RESELLERS ASSOCIATION

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April 12, 1996

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SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, offers the following comments with respect to the implementation of the '96 Act's new universal service requirements:

- Care should be taken in developing the contributory scheme by which the Federal universal service support mechanism is funded to avoid double recovery from resale carriers. To this end, universal service support contributions should be recovered directly only from facilities-based carriers, with resale carriers indirectly contributing their share through payment of network service charges incorporating these amounts. At a minimum, the Commission should deduct from the revenue base on which the interstate support contributions of resale carriers are computed all amounts paid to other carriers for network services.

- To the extent that they assume the risks associated with the provision of services supported by interstate support mechanisms, resale carriers are no less entitled to be designated "eligible telecommunications carriers" and no less deserving of Federal universal service support than the LECs from whom they acquire network services whether or not they utilize any of their own facilities in providing service.

- The Commission should use a proxy model to compute high cost assistance, measured as the difference between the economic cost of serving an area and the nationwide average cost of service. If properly constructed, such a mechanism would provide support funds only to those carriers serving high cost areas, rewarding carriers that operate efficiently and incenting carriers that operate inefficiently to streamline their operations. The resultant mechanism would replace the USF, DEM weighting, CCL charges and the RIC.

- The universal service support fund should be administered by a neutral third party administrator appointed by and subject to the oversight of the Commission.

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COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel, hereby submits its Comments in response to the Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93, released by the Commission in the captioned docket on March 8, 1996 (the "Notice"). The Commission issued the Notice, and initiated the instant rulemaking proceeding, pursuant to the mandate set forth in Section 254(a)(1) of the Telecommunications Act of 1996 ("'96 Act")[1] requiring it to promptly adopt regulations implementing the new universal service requirements embodied in Sections 102(a) and 254 of the '96 Act.[2] Specifically, the Commission seeks to provide definition to the various Federal universal service support mechanisms required by the '96 Act, to identify the services that will be supported by, and the geographic areas, entities and individuals that will be the beneficiaries of, these mechanisms, and to determine how, to what extent and by whom these mechanisms will be funded.

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[1] Pub. L. No. 104-104, 110 Stat. 56, § 254(a)(1) (1996).

[2] 47 U.S.C. §§ 214(e), 254.

I.

INTRODUCTION

TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect the interests of entities engaged in the resale of telecommunications services. TRA's interest in this proceeding is in ensuring that the universal service support mechanisms that the Commission adopts do not impede the competitive entry or hinder the competitive effectiveness or viability of the hundreds of small to mid-sized resale carriers that comprise the rank and file of TRA's membership.

TRA's more than 450 members are all engaged in the resale of interexchange, international, local exchange, wireless and other services and/or in the provision of products and services associated with such resale. Employing the transmission, and often the switching, capabilities of underlying facilities-based carriers, TRA's resale carrier members create "virtual networks" to serve generally small and mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to rates otherwise available only to much larger users. TRA's resale carrier members also offer small and mid-sized commercial customers enhanced, value-added products and services, including a variety of sophisticated billing options, as well as personalized customer support functions, that are generally reserved for large-volume corporate users.

While TRA's resale carrier members range from emerging, high-growth companies to well-established, publicly-traded corporations, the bulk of these entities are not yet a decade old. Nonetheless, TRA's resale carrier members collectively serve millions of residential and commercial customers and generate annual revenues in the billions of dollars. The emergence and dramatic growth of TRA's resale carrier members over the past five to ten years have produced thousands of new jobs and new commercial opportunities. In addition, TRA's resale carrier members have facilitated the growth and development of second- and third-tier facilities-based interexchange carriers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped other small and mid-sized companies expand their businesses and generate new employment opportunities.

TRA wholeheartedly supports the laudable goal of providing affordable access to a wide range of telecommunications services to all persons and locales within the United States. The various initiatives undertaken by the Commission over the past decade in furtherance of this goal,[3] while not without flaws, have produced impressive results; indeed, the last available data shows that telephone penetration, as measured by the percentage of households in the United States with telephones, had reached nearly 94% in 1993.[4] The Section 254(a)(1) universal service mandate provides the Commission with an opportunity both to correct past problems with and to improve upon its current interstate support mechanisms. As acknowledged in the Notice (at *e.g.*, ¶¶ 8, 17), however, the Commission must be careful in the course of revamping existing and constructing new support mechanisms to ensure that it does not undermine the "pro-competitive, de-regulatory national policy framework" established by the '96 Act or unnecessarily impede the principal objective of the Act -- *i.e.*, "to accelerate rapidly private sector deployment of advanced

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3 Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms, Common Carrier Bureau, Federal Communications Commission (Feb. 23, 1996).

4 Monitoring Report, CC Docket No. 87-339, prepared by the Federal and State Staff for the Federal-State Joint Board in CC Docket No. 80-286 (May 1995). pp. 12-47.

telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[5] Critical to this goal, the Commission must be cognizant of the impact of its actions here on the small and mid-sized resale carriers which have so greatly enhanced competition in the interexchange market and which are currently poised to enter the local exchange/exchange access market.

II.
ARGUMENT

A. The Manner In Which Universal Service Support Obligations Are Assessed Should Not Unduly Burden Resale Carriers

As the Commission has repeatedly acknowledged, resale of telecommunications services generates "numerous public benefits," chief among which are the downward pressure resale exerts on rates and the enhancements resale produces in the diversity and quality of product and service offerings.[6] As the Commission recently remarked in concluding that wireless resale had the "overall effect of promoting competition," resale provides "a means of policing price discrimination," "some degree of secondary market competition," and "a source of marketplace innovation."[7] The lower prices and service enhancements that resale generates

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[5] H.R. Rep. No. 104-458, 104th Cong., 2nd Sess., p. 1 (Jan. 31, 1996).

[6] AT&T Communications: Apparent Liability for Forfeiture and Order to Show Cause, 10 FCC Rcd. 1664, ¶12 (1995), pet. for rev. pending AT&T Corp. v. FCC, Case No. 95-1339 (filed July 5, 1995) ("AT&T Forfeiture Order") (citing Resale and Shared Use of Common Carrier Services, 60 F.C.C.2d 261 (1976) ("Resale and Shared Use Order"), recon. 62 F.C.C.2d 588 (1977), aff'd sub nom. American Tel. & Tel. Co. v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978); Resale and Shared Use of Common Carrier Services, 83 F.C.C.2d 167 (1980), recon. 86 F.C.C.2d 820 (1981)); *see also* U S West Tariff Nos. 3 and 5, 10 FCC Rcd. 13708, ¶11 (1995) (citing the Resale and Shared Use Order and the AT&T Forfeiture Order).

[7] Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services (Second Notice of Proposed Rulemaking), 10 FCC Rcd. 10666, ¶ 84 (1995).

redound primarily to the benefit of lower volume users. As noted above, TRA's resale carrier members serve generally small and mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to rates and enhanced, value-added products and services and personalized customer support functions which are generally not provided to smaller users.

To obtain and preserve these public benefits for consumers, the Commission long ago adopted, and continues to enforce, policies which require that "all common carriers . . . permit unlimited resale of their services."[8] To this end, the Commission affirmatively deems unjust and unreasonable, and prohibits restrictions on, resale.[9] Indeed, the Commission has declared that any "[a]ctions taken by a carrier that effectively obstruct the Commission's resale requirements are inherently suspect."[10]

The Commission's resale policies have produced their intended effect. The resale sector has long been the fastest growing segment of the long distance industry.[11] Resale of international telecommunications services is exploding.[12] Wireless resale, including resale of

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[8] AT&T Forfeiture Order, 10 FCC Rcd. 1664 at ¶2.

[9] Resale and Shared Use Order, 60 F.C.C.2d 261 at 298-99.

[10] AT&T Forfeiture Order, 10 FCC Rcd. 1664 at ¶13.

[11] Long Distance Market Shares (Fourth Quarter 1995), Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Table 6 (March 1996).

[12] Trends in the International Telecommunications Industry, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, p. 37 (June 1995). *See* VIA USA, Ltd., 9 FCC Rcd. 2288, ¶ 11 (1994), aff'd 10 FCC Rcd. 9540 (1995) ("The Commission has long recognized that increased competition in the international marketplace benefits U.S. ratepayers, and has routinely granted applications for Section 214 authorizations for the resale of international switched voice service to further that goal.").

cellular telephone and paging services, continues to expand.[13] And resale carriers are already entering the local exchange/exchange access market now that the '96 Act has eliminated legal barriers to entry.[14]

Against this backdrop, TRA submits that the Commission should either absolve resale carriers of a direct obligation to contribute to universal service support mechanisms or, at a minimum, compute their contributions on the basis of interstate revenues net of payments made to other carriers, consistent with the mechanism utilized to compute regulatory fees for interexchange carriers.[15] Imposition of a direct universal service support funding obligation on resale carriers would result in double, triple or greater recovery of such amounts from resale carriers. Whether carrier contributions to interstate support mechanisms are based on revenues, lines or minutes of use, the entities that provide network services to resale carriers will make contributions on the facilities or services they provide to resale carriers. Any direct contributions that resale carriers are required to make will thus be associated with facilities or services for which contributions have already been made. And given that larger resale carriers often provide "wholesale" services to smaller resellers, contributions may flow again and again from the same interstate carriage.[16]

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[13] "From a Resale Point of View," Mobile Phone News, Vol. 14, No. 1 (Jan. 1, 1996); "MCI Buys SHL Systemhouse; Closes Nationwide Purchase," Communications Today (Sept. 20, 1995).

[14] 47 U.S.C. § 253.

[15] Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd. 13512, ¶¶ 118-137 (1995) ("Regulatory Fee Order").

[16] Complicating this matter, some resale carriers still act primarily as "aggregators." In an "aggregated" service, the underlying network provider not only renders the bill to the end-user, but the end-user submits payment to that entity. The resale carrier is compensated in the form of credits received from the underlying facilities-based carrier. Moreover, multiple levels of resale carriers can participate in the same "aggregated" programs as "wholesalers" and "retailers."

This redundant recovery will have a multi-level adverse impact on resale carriers and the consuming public. Facilities-based network providers will likely incorporate interstate support contributions into their charges and pass them through to resale carriers. If interstate support contributions are collected directly from resale carriers and resale carriers can incorporate such contributions into their rates, they will likewise pass these amounts through to their customers, along with the contributions passed through to them by their network providers. In the event that multiple levels of resale are involved, three or more contributions could ultimately be incorporated into end-user charges. The more likely scenario, however, is that market forces would prevent resale carriers from incorporating the multiple contributions into their charges and as a result, their net revenues would be reduced. Given that second, third or fourth tier resale carriers could make the same contribution indirectly two, three or more times, the reduction in net revenues would be far higher than the amount of the contribution collected directly from them.

Given that most resale carriers are small to mid-sized businesses, any regulation which would adversely impact profitability would have a more direct and immediate impact on them than on the much larger network providers. At a time when the nation is looking to small business to create jobs and stimulate economic growth and the Commission is looking to resale carriers to drive costs lower and enhance service diversity and quality, TRA submits that the Commission would be ill-advised to handicap such entities with redundant universal service support contributions. A contribution scheme which disproportionately burdens the resale market

A sounder approach would seemingly be to directly recover all universal service support contributions from the resale carriers' network providers, with resale carriers indirectly contributing their share through payment of charges incorporating these amounts. At a minimum, the Commission should deduct from the revenue base on which the interstate support contributions of resale carriers are computed all amounts paid to other carriers for network and other telecommunications facilities and services. As the Commission noted in its Regulatory Fees Order, permitting carriers to "subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services," is necessary to "avoid imposing a double payment on resellers."[17] Certainly, a contribution scheme which requires a "double payment" from resale carriers cannot be said to be either "equitable" or "nondiscriminatory," as required by Section 254(b)(4) of the '96 Act.[18]

B. Resale Carriers Should Be Eligible For Designation As "Eligible Telecommunications Carriers"

Under Section 254(e) of the '96 Act, only a carrier which has been designated an "eligible telecommunications carrier" under Section 214(e) of the Communications Act of 1934, as amended, is entitled to receive Federal universal service support.[19] Section 102(a) of the '96 Act provides that a carrier may be designated as an "eligible telecommunications carrier" if it offers, and broadly advertises the availability of. the various services supported by interstate support mechanisms under Section 254(c) either by using its own facilities or by reselling the

[17] 10 FCC Rcd. 13512 at ¶ 135.

[18] TRA also urges the Commission to exempt from universal service support funding obligations carriers which do not generate a threshold level of interstate revenues. Such a gross interstate telecommunications revenue floor should be set at least in the tens of millions of dollars.

[19] 47 U.S.C. § 254(e).

services of another carrier.[20] While Section 102(a) could be read to require as a precondition to designation as an "eligible telecommunications carrier" the provision by a carrier of some physical facilities, TRA submits that such an interpretation would be unduly narrow, but if valid, Section 102 would present an ideal situation for the exercise of the forbearance authority granted the Commission under Section 401 of the '96 Act.[21]

To the extent that a resale carrier engaged in the resale of local exchange service, either directly pursuant to Section 251(c)(4)[22] or through creation of a "virtual network," developed by combining unbundled network elements acquired under Section 251(c)(3),[23] offers the services supported by interstate support mechanisms and broadly advertises the availability of such services, it should be eligible to receive Federal universal service support. Essentially, a resale carrier reselling local exchange services directly under Section 251(c)(4) has stepped into the shoes of the incumbent local exchange carrier ("LEC") that is supplying it with network services, not only providing its customers with at least the same basic services the LEC would have otherwise provided those customers, but providing the LEC with a guaranteed return on the investment it made in the facilities used by the resale carrier to serve its customers. A resale carrier which pieces together a "virtual network" out of unbundled network elements acquired from the LEC pursuant to Section 251(c)(3) has constructed a network no less viable than the LEC's physical network and has once again provided the LEC with a guaranteed return on a portion of its capital investment. In both instances, the resale carrier has assumed a portion of

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[20] 47 U.S.C. § 102(a).

[21] 47 U.S.C. § 160.

[22] 47 U.S.C. § 251(c)(4).

[23] 47 U.S.C. § 251(c)(3).

the risk taken by the LEC in constructing physical facilities and has provided the LEC with a buffer from that portion of the risk. Having assumed the risk associated with the provision of the services supported by interstate support mechanisms and committed to broadly holding itself out to provide such services, the resale carrier is no less deserving of Federal universal service support than the LEC from whom it acquires network services.

Certainly, if a more narrow reading of Section 102(a) were compelled, forbearance would be appropriate to avoid discriminatory treatment that might either discourage competitive entry by resale carriers into the local exchange market or provide incumbent LECs with an unjustified competitive advantage over resale providers of local exchange services. If resale carriers are deemed to be ineligible to receive universal service support funding and one or more facilities-based carriers are provided such support, the resale carriers will not be competitive unless their costs are less than those of the facilities-based providers by a margin exceeding the amount of the support funding. Allowing resale carriers to receive universal service support funding will allow them to compete on a more even footing with incumbent LECs, as well as with any other facilities-based competitive local exchange service providers ("CLECs") that are designated as "eligible telecommunications carriers."

In order to ensure that resale carriers have the opportunity to qualify as "eligible telecommunications carriers," however, it is critical that LECs make available for direct resale under Section 251(c)(4) all services that will be supported by interstate support mechanisms and make available under Section 251(c)(3) all of the unbundled network elements necessary to provide such services. Thus, if the Commission designates as services to be supported by universal service support mechanisms services such as touch-tone and operator services, it must require LECs to provide resale carriers with meaningful opportunities to offer such services.

C. Universal Service Support Mechanisms Should Be Carefully Structured To Encourage Efficiency, Not To Simply Preserve Or Enhance Existing LEC Revenue Streams

Section 254(b)(1) of the '96 Act[24] lists as one of the "principles" that should guide the Commission's policies for the preservation and advancement of universal service the "affordable" availability of quality telecommunications services. The key questions presented by this mandate are what constitutes "affordable" rates and what level of support is necessary to allow LECs to maintain such affordable rates. TRA submits that the principal flaw in current support mechanisms -- *e.g.*, the Universal Service Fund ("USF") and Dial Equipment Minutes ("DEM") weighting -- is that they often result in support payments that are not necessary to the maintenance of affordable rates. Moreover, these mechanisms actually encourage inefficiencies which exacerbate this problem.

Support payments should be tied to the economic costs of providing local service, not to the reported revenue requirements (USF) or the mere size (DEM) of individual LECs. An interstate support mechanism reflecting an LEC's reported costs not only does not promote efficiency, it actually rewards inefficiency. As the Commission has acknowledged, "[a] high-cost assistance program based solely on reported costs . . . provides no incentives for efficient operation:"

> [U]nder the current rules, a LEC that provides quality service while carefully controlling the associated costs receives less USF assistance than a LEC that is less successful at cost control.[25]

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[24] 47 U.S.C. § 254(b)(1).

[25] Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board (Notice of Proposed Rulemaking and Notice of Inquiry), 10 FCC Rcd. 12309, ¶ 55 (1995).

TRA, accordingly, supports the use of a proxy model to compute high cost assistance, measured as the difference between the economic cost of serving an area and the nationwide average cost of service. If properly constructed, such a mechanism would funnel support funds to carriers serving high cost areas and hence deserving of universal service support. Moreover, in so doing, it would reward those carriers that operate efficiently and incent those carriers that operate inefficiently to streamline their operations. In addition, separating support payments from individual carrier characteristics would allow for competitively neutral operation of the support mechanism.

To be effective, a proxy model should, as does the Benchmark Costing Model cited in the Notice,[26] reflect the costs associated with the efficient, cost-effective provision of service, utilizing current technology and up-to-date system engineering and design. Use in the model of forward-looking, rather than embedded, costs is essential in order to remove incentives to retain out-of-date facilities and equipment. In the long-term, technological neutrality may be advisable for the model, but in the short-term it is unnecessary given that wireless service has yet to pose a meaningful competitive challenge to landline service. All model inputs and structures must be nonproprietary and open for public analysis, if the proxy model is to form the basis for public policy actions.

While it will certainly require adjustment and fine-tuning,[27] the Benchmark Costing Model has generated some valuable and revealing results. It appears that the average monthly

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[26] Benchmark Cost Model: A Joint Submission by MCI Communications Inc., NYNEX Corporation, Sprint Corporation and U S West, Inc. (December 1, 1995).

[27] As the Commission points out, the failure of the Benchmark Costing Model to include business lines, for example, likely produced a substantial overstatement of network costs. Moreover, it appears that the costs attributed to switching in the model are likewise overstated.

cost of providing basic residential telephone service ranges from a low (excluding Washington, D.C.) of $9.52 (Massachusetts) to a high of $39.58 (Montana) with a national average (excluding Alaska) of $16.01. The Benchmark Costing Model thus confirms that there is a continuing need for interstate support mechanisms, but at the same time reveals the need to target such support far more specifically than the USF or DEM weighting mechanisms have done in the past.

A universal service support funding mechanism predicated on the proxy model discussed above should replace altogether the USF and the DEM. Moreover, because it would subsume all differences between the nationwide average cost of providing basic residential telephone service and the economic cost of providing such service in any given locale, such a funding mechanisms would also render superfluous other subsidies currently embedded in LEC access and other charges. Thus, the subsidies that have been built into the carrier common line ("CCL") charge and the residual interconnection charge ("RIC") would have to be eliminated to avoid double recovery of cost differentials.

By facilitating the elimination of the USF, DEM weighting, and the subsidies currently embedded in the CCL charge and the RIC, a universal service support mechanism predicated on a proxy model such as the Benchmark Costing Model, would clearly satisfy Section 254(e)'s mandate that any Federal universal service support must be "explicit."[28] The impact of a proxy model-based universal service support mechanism on the subscriber line charge ("SLC") is, however, somewhat less obvious. Initially, TRA submits that both the residential/single line business and the multi-line business caps on the SLC have outlived their usefulness under the '96 Act. Certainly, the CCL charge should be eliminated as an unnecessary

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[28] 47 U.S.C. § 254(e).

competitive distortion which is entirely inconsistent with the directives of the '96 Act. It is by no means a given, however, that elimination of the CCL charge would produce a significant increase in the SLC. The assumption that local service rates do not already recover the cost of local service has never been truly tested;[29] indeed, evidence continues to mount that in many instances, LEC local service charges exceed the economic cost of providing local exchange service.[30]

D. The Universal Service Support Fund Should Be <u>Administered By A Neutral Third Party Administrator</u>

In order to ensure competitive neutrality, as well as the equitable and nondiscriminatory character, of the interstate support mechanism, it is imperative that the universal service fund be administered by a neutral third party. TRA agrees with the Commission that a non-governmental entity would be best suited for this purpose. As recognized by the <u>Notice</u>, fund administration will require large-scale information processing and database capabilities. It will further require diligent, even-handed enforcement. Any appearance of favoritism would be highly detrimental to the process.

A third party selected by the Commission following a competitive bidding process should bring the requisite neutrality if strict non-affiliation requirements are imposed. The entity selected should be appointed for a fixed period of years and remain subject to general

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[29] Similarly unproven is the assumption that an increase in the SLC would adversely impact telephone penetration rates. Past experience suggests that this is not a likely eventuality. Monitoring Report, CC Docket No. 87-339, prepared by the Federal and State Staff for the Federal-State Joint Board in CC Docket No. 80-286 (May 1995), Table 1.1.

[30] For example, a study prepared by Hatfield Associates, Inc. and submitted by AT&T and MCI to the Pennsylvania Public Utilities Commission in Docket No. L-00950102 during the Summer of 1995 documented that in Pennsylvania, Bell Atlantic's Basic Universal Service revenues exceeded the costs of providing the service.

Commission oversight. The administrator's mandate, as well as all guidelines for the administration of the fund, should be clearly established. In this manner, fund administration should be fair, efficient and competitively neutral, as well as predictable, all as required by the '96 Act.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission in implementing the universal service support requirements mandated by the Telecommunications Act of 1996 to adopt rules and policies consistent with the comments set forth herein.

Respectfully submitted,

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